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AUTHOR Enos, Donald F.
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ABSTRACT

When considering the tort liability of school districts or their employees for injuries suffered by students, the court basically mentions two separate problems: first, whether under the facts of the case any duty of supervision was owed to the injured person; second, whether such duty, if owed, was reasonable and was satisfactorily conducted by the supervisory personnel. These basic statements are enlarged upon in connection with chemistry, shop, and manual or vocational training classes where the supervisory duty of school personnel is generally described as that of a reasonable or prudent person. Therefore, the level of caution or alertness required of the teacher or the employee is commensurate with the degree of danger inherent in the particular situation. The standard of care requires that the school district and its employees anticipate a wide range of dangerous acts and conditions that could expose the student to an unreasonable risk of harm. As a result, the "ordinary care" employed by a school district and its employees when supervising students must be "extreme care." (Author)

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SUPERVISION: WHO'S RESPONSIBLE

OR

THE LAW AND THE IRRESPONSIBLE SOMEBODY

by

Donald F. Enos

March 1975

EA 007 329

Teachers are becoming increasingly involved in court cases relating to tort liability and supervision. Unfortunately, few teachers have had a course in school law - nor would they be interested in one if it were available. On the other hand, many administrators are well versed in school law because it directly relates to their responsibilities. However, "Times they are a changin." Increased court suits plus teacher militancy may soon bring about greater teacher interest in school law.

Sovereign Immunity:

Sovereign immunity must be mentioned in any discussion of tort liability of school districts for the negligent acts of their employees (31). Sovereign immunity in its pure form, completely absolves a governmental body from liability and prevents an injured party from recovering damages for negligence.

The doctrine originated in England, where the courts accepted the belief that the "king could do no wrong" and dismissed cases against the sovereign government. In this historic case, Russell vs. Men of Devon (32), sovereign immunity was extended to an unincorporated governmental body. Although the plaintiff was prepared to show negligence, the court refused relief on the basis of immunity. The concept was first applied in the United States with the case Mower vs. The Inhabitants of Leicester in 1812 (47). It was quickly extended to all governmental or quasi-governmental agencies of the states.

Although the doctrine with its illogical exceptions has been denounced by scholars (54), it was only recently repealed, with varying degrees, in nineteen jurisdictions (29, 48). These decisions suggest that since a petition of right could be filed by an aggrieved party seeking redress, early courts erred in assuming that sovereign immunity existed in common law (48). Courts have

also recognized that the defendant in Russell vs. Men of Devon was an unincorporated town, making the case poor authority for the application of immunity to political subdivisions.

Courts have stated that common sense dictates that a school district should be held accountable to the same extent as private parties (46). In the jurisdictions which have repealed sovereign immunity, a claimant now has the right to sue the school district, but he does not automatically recover for damages.

General Principles of Supervision:

A rule generally recognized in case law states that there can not be any liability without breach by the school district or its employees (30). The court has also described the term duty, as reasonable (64) and prudent (68) care, as ordinary care (39) and as the care a person with ordinary prudence, charged with similar duties, would exercise under the same circumstances (59, 72).

School organizations have the duty to supervise the conduct of students on school premises at all times and to enforce relevant rules and regulations. The failure to do this can establish actionable negligence (6). If special and dangerous circumstances are absent, the school district is not responsible for constant supervision of the movements of students at all times (72).

Violation of the State safety statutes by school districts may be a basis of liability, because of negligent supervision in permitting the violation (38). The failure of a school to conform to State rules and regulations requiring supervision of school premises may be the basis of liability where student injuries result (50). However, there must be a proximate casual connection between the inadequacy of the lack of supervision and the accident. In the case

of Furtado vs. Montebello Unified School District (24) student injuries resulted from the direct acts of a teacher. The teacher through negligence dropped an object on a students foot and the doctrine of res ipsa loquitur was held applicable.

The determination of whether a duty of care is present in a given situation is a question of law for the court (21, 55). However, if it is established that there is a potential duty of supervision under the general circumstances of the case, the question of whether supervision was required under the particular facts of the case may be considered one of the facts for the jury (59). When the activity in which the injury occurred was not reasonably anticipated, liability can not be predicated on the lack of insufficiency of supervision (40). The adequacy of supervision, in many instances, is dependent on the question of whether the school employees had knowledge or notice of the particular dangerous practice or activity which caused the injury (21).

The courts have also stated it is not necessary to prove whether the occurance of the injury was forseeable in order to establish negligence. However, if a reasonably prudent person could anticipate an injury of the same general type, the absence of safeguards could constitute negligence (75). Liability for the failure to provide adequate supervision has been held to depend upon whether the supervision might have prevented the injury (22). However, a school district may not be held liable where there is no proof that the supervision would have prevented the injury (75). To support this position, the courts have stated that the law does not impose liability on a school district for injuries arising from the unlawful or willful misconduct of its students nor for injuries arising from the negligence of fellow students (72). Courts have also stated that the school is not an insurer of the safety of pupils or students (69, 21).

The assumption of risk may be based on the lack of insufficiency of supervision for injuries caused by the acts of fellow students. It may be presumed that the student voluntarily assumed a dangerous position, that he had actual knowledge of the danger, or that he could have anticipated the actions of his fellow students which might cause injury (75).

Liability in Laboratory Classes:

A school district is not liable for student injuries in the absence of negligence which is the proximate cause of the injuries (23, 10). The duty of care owed by a school district to an injured student or to a class where he is a member is essential(10). A teacher has the duty to act as a reasonable and prudent person under the circumstances (10).

When dangerous chemicals are used in chemistry classes, it is negligence to conduct the classes without properly safeguarding the students from the possibility of injury (17). A chemistry teacher owes a duty to exercise reasonable care in providing and labeling dangerous materials used in chemistry experiments. He must also properly instruct and supervise the use of the materials by the students (43). A teacher or school district must exercise ordinary prudence in keeping dangerous chemicals from students and in preventing them from being used by students except under supervision (56). Liability is generally imposed upon the school district when the teacher fails to properly warn and instruct the students concerning potentially dangerous chemicals. Liability may also be imposed if the teacher fails to label the containers of dangerous materials or check the equipment for defects (43). The duty of supervision, when dangerous materials are being handled, exceeds directions in a textbook or pamphlet. Personal instructions and warnings must be given by

the instructor (43). Failure to keep dangerous chemicals locked up may also result in liability if the jury finds that a person of ordinary prudence would do so under similar circumstances (56).

Liability for chemistry class injuries has been denied when the students were properly warned and instructed and the students acted in disregard to those instructions. (23).

Ignorance of pupils in a chemistry experiment may be a factor in imposing liability on a school district. When the teacher fails to instruct the student verbally as to proper use of the materials or to warn him as to their dangerous nature, even though instructions and warnings are found in his textbook the district may be held liable (43). The mere fact that a student takes chemicals from a shelf without permission has been held not to establish that he was negligent as a matter of law, especially when he did not know about their dangerous characteristics and had never received instructions concerning them (56).

In one California case the court applied the doctrine of res ipsa loquitur to the teachers conduct where an explosion occurred in a chemistry class (24). Though the application of the holding has been confined to the facts of the case (24), it is indicative of the stringest duty imposed upon a teacher. Under certain circumstances, school districts and institutions of higher learning have not been held liable when its duty of supervision was not met. The general rule is: the injury must be such that supervision could not reasonably be expected to prevent it. The reasoning behind this statement is that under such circumstances, the lack of supervision is not the proximate cause of the injury.

Liability in Shop Classes:

The finding of negligence by a school district has been held to turn upon three

elements: first, the existence of a duty to use care; second, a breach of such duty by the creation of an unreasonable risk of harm; and third, proximate cause (10). However, inquiry into proximate causation presupposes an affirmative finding of negligence based upon the dual occurrance of duty and its breach. A duty of care, owed by the alleged wrong-doer to the insured plaintiff or to a class of which he is a member is indispensable to negligent liability.

One factor in the delineation of duty is the anticipation of harm. Anticipation is equally relevant in the exploration of proximate cause, especially where an intervening act plays a contributory role in the accident. Divergent results are possible and judicial disagreements arise by approaching negligence determination through the gateway of duty on one hand, or proximate causation on the other (55).

In a few cases school districts have violated state safety regulations and the same liability has been applied to them as it would if the defendant was a private citizen (37).

The school has a duty to instruct pupils in the proper use of protective devices when operating machinery (1). Where a statute or regulation requires safety equipment or protective devices, the school agency has an absolute duty to furnish such equipment or devices with the result that violation creates liability as a matter of law (37).

Where there is danger the student must have appropriate instruction and warning (43). In case an injured pupil fails to wear protective equipment such as goggles, or factors are such that there is not an adequate supply of such goggles on hand and the failure of the teacher to keep a watch on pupils to see

that they had found and were using them and to warn pupils of the danger involved, causal negligence would then be supported (60). A school district may also be held liable if a teacher fails to maintain discipline in a shop class resulting in injury to a student (39).

Knowledge by a teacher of the defective condition of a piece of equipment given a student is not a prerequisite to recovery. However, if it can be established that the teacher or the school authorities were negligent in having such a piece of equipment, or did not properly inspect it or otherwise determine its condition, and that the defect was the proximate cause of the injury, then recovery could be received (18, 41). In the absence of defective condition, recovery for liability is not applicable from a machine injury when properly posted notices and verbal warnings have been given the students. This application also applies when they have been properly instructed and protected with respect to safety measures (51).

A school employee has the duty to warn the shop student who under his instruction makes a dangerous instrument. The instructor must also explain the dangerous potential of the instrument as well as the proper safety practices. The school may be held liable for an injury caused by such an instrument even if the injury occurs in the student's home (10).

Liability has been denied when the school district and its personnel have met all the requirements for proper instruction and warning. It has also been denied when the machinery involved was without defect as well as in cases where machinery was used without the permission of the school personnel (34).

Liability in Physical Education Classes:

Cases in which recovery is sought for injuries suffered in connection with

physical education classes present a myriad of factors which determine or have a bearing on whether the school district is liable.

Generally it is not necessary to prove that the injury which occurred must have been anticipated by the school district in order to establish that their conduct constituted negligence. Negligence is established if a reasonably prudent person would anticipate that an injury of the same general type would be likely to occur under the same circumstances (72).

The fact that a pupil is required to participate in a potentially dangerous physical activity, and is injured while following the teachers directions, is an important factor in establishing liability on the part of the school district. However, there must be some basis for establishing negligence on the part of the teacher (7).

In a number of cases, some physical or mental peculiarity of the injured person has been a factor in imposing liability upon a school district (7). However, an unusual characteristic of the injured person is not a factor unless it is established that the school district or its employees had prior notice (33).

The degree of supervision required depends upon the degree of hazard or danger to which the student is exposed. Constant supervision of all movements of students at all times is not ordinarily required (72).

When lack of supervision is relied on in imposing liability upon a school district for an injury suffered by a student, the lack must appear as the proximate cause of the injury. However, liability does not lie where it is reasonable to assume that the injury would have occurred despite the presence of the teacher (20).

In physical training classes liability depends generally on the facts of each

case(45). The general rule is also one of ordinary care and liability. However, it may be imposed only if additional supervision required is generally held to very with the anticipated danger or the hazard present in each circumstance (21, 65, 59, 72).

Recovery has been permitted in a number of cases for game injuries where the conditions were overcrowded or the equipment was defective. Recovery has also been allowed in a number of cases where the student was injured while performing or attempting to perform a particular physical exercise under the teacher's direction, particularly where the student protested or where there was an indication that the student was not prepared or was not properly instructed in the activity (7).

Recovery from game injuries has frequently been denied when the game was not essentially dangerous and nothing was wrong with the equipment or the premises (74). This denial has also been applied when the physical condition of the plaintiff was unknown (33).

Recovery is not ordinarily permitted where the exercise was relatively simple and the injury that occurred could not have reasonable been anticipated. It has also been denied when the equipment was in proper condition and was used by the student as a part of the regular physical education class. Recovery is ordinarily not allowed in outdoor game injuries where the game is not essentially hazardous and the injury occurs as a result of an unavoidable collision between players. This statement applies even though the game was compulsory (20).

The court has also held that the lack of reasonable care to prevent aggravation of an injury can result in liability. This occurred in the case of Pirkle vs. Oakdale Union Grammar School District (52), where the court held that the teacher's delay in getting medical aid resulted in negligence and he could have reasonably been expected to discover the serious injury much sooner and that no aggravation would have resulted from it. This was also the case in Welch vs. Dunsmuir Joint Union High School District (67), where a high school student was injured playing football. The coach failed to properly supervise the removal of the injured student. The removal resulted in further damage to the students spinal cord. The court then stated that ordinary care in moving an injured person required extreme care.

Therefore, the general rule for a school district not to be held liable for injuries suffered by a student in a physical education class, is when the injuries are not proximately caused by the negligence of a teacher or another employee or by defective premises or faulty equipment (57).

Summary:

When generally discussing tort liability in reference to school districts or their employees for injuries suffered by students, the court basically mentions two separate problems. First, whether under the facts of the case, any duty of supervision was owed to the injured person. Second, whether such duty if owed, was reasonable, and satisfactorily conducted by the supervisory personnel.

These basic statements are enlarged upon in connection with chemistry, shop, and manual or vocational training classes where the supervisory duty of school personnel is generally described as that of a reasonable or prudent person. Therefore, the level of caution or alertness required by the teacher

or the employee is commensurate with the degree of danger inherent in the particular situation (17).

It is clear that a school district and its employees obligation to look out for these allegations is strict because students are often thoughtless and impulsive (62). The standard of care, requires that the school district and its employees anticipate a wide range of dangerous acts and conditions which could expose the student to an unreasonable risk of harm. As a result the "ordinary care" employed by a school district and its employees when supervising students must be "extreme care".

BIBLIOGRAPHY

1. Ahern v Livermore Union High School District 208 Cal. 770, 284 P. 1105 (1930).

2. American Law Review 3rd, 35-361.

3. American Law Review 3rd, 36-758.

4. American Law Review 3rd, 38-830.

5. Barllargron v Myers 180 Cal. 504, 182 P. 37,39.

6. Beck v San Francisco Unified School District 225 Cal. App. 2d 503, 37 Cal Rptr. 471 (1964).

7. Beilman v San Francisco High School District 11 Cal. 2d 576, 81 P2d 894, (1938).

8. Black's Law Dictionary Revised 4th Ed., West Publishing Co., St Paul, (1968).

9. Bruce v Jefferson Union High School District 210 Cal. App. 2d 632 Cal. Rptr. 762 (1962).

10. Calandri v Ione Unified School District 219 Cal. App. 2d 542, 33 Cal. Rptr. 333, (1963).

11. California Jurisprudence No. 9, p. 551.

12. California Jurisprudence No. 19, p. 739.

13. California Political Code, Section 1623.

14. California School Code 2.801 as amended by St. (1931).

15. California School Code 3.735.

16. Chase v Shasta Lake Union High School District 66 Cal. Rptr. 517, 249 C.A. 2d 612, (1968).

17. Damgaard v Oakland High School District 212 Cal. 316, 298 P. 983 (1931).

18. Dawson v Tulare Union High School District 98 Cal. App. 138, 276 P. 424 (1929).

19. Dutcher v Santa Rosa High School District 156 Cal. App. 2d 256, 319 P 2d 14 (1957).

20. Ellis v Burns Valley School District, 128 Cal. App. 550, 18 P 2d 27 (1933).

21. Ford v Riverside City School District, 121 Cal. App. 2d 554, 263 P 2d 626, (1953).

22. Forgnone v Salvador Union Elementary School District 41 Cal. App. 2d 423, 106 p2d 932, (1940).

23. Frace v Long Beach City High School District 58 Cal. App. 2d 566, 137 P2d 60, (1943).

24. Furtado v Montebello Unified School District 206 Cal. App. 2d 72, 23 Cal. Rptr. 476 (1962).

25. Gilbert v Sacramento Unified School District 258 Cal. App. 2d 505, 65 Cal. Rptr. 913 (1968).

26. Goodman v Pasadena City School District 4 Cal. App. 2d 65, 40 P2d 854 (1935).

27. Grover v San Mateo Jr. College District 146 Cal. App. 2d 86, 303 P2d 602 (1956).

28. Hack v Sacramento City Junior College District 131 Cal. App. 444, 21 P2d 477 (1933).

29. Hargrove v Town of Coca Beach, 96 So 2d 130 Fla. (1957).

30. Harrison v Caddo Parish School Board 170 So 2d 926, writ refused 248 La 701, 181 So 2d 399, (1965).

31. Hastings Law Journal No. 15, 495 (1964).

32. Journal of Law and Education, No 1, January (1972).

33. Kerby v Elk Grove Union High School District 1 Cal. App. 2d 246, 36 P2d 431, (1934).

34. Klenzendorf v Shasta Union High School District 4 Cal. App. 2d 164, 40 P 2d 878 (1935).

35. Lee, Beatrice, Research Report 1972-B6 Teachers Day in Court: Review of 1971, National Education Association, (1971).

36. Lee, Beatrice, Research Report 1971-B7 Teachers Day in Court: Review of 1970, National Education Association (1970).

37. Lehmann v Los Angeles City School District 154 Cal. App. 2d 256 316 P2d 55 (1957).

38. Lehmuth v Long Beach Unified School District 53 Cal. 2d 544, 2 Cal. Rptr. 279, 348 P2d 887 (1960).

39. Lilienthal v San Leandro Unified School District 139 Cal. App. 2d 453, 293 P2d 889 (1956).

40. Luna v Needles Elementary School District 154 Cal. App. 2d 803, 316 P2d 773 (1957).

41. Maede v Oakland High School District 212 Cal. 419, 298 P. 987 (1931).

42. Martin v Roman Catholic Archbishop 158 Cal. App. 2d 64, 322 P2d 31 (1958).

43. Mastrangelo v West Side Union High School District 2 Cal. 2d 540, 42 P2d 634 (1935).

44. McCloy v Huntington Park Union High School District 139 Cal. App. 237, 33 P2d 882 (1934).

45. McGee v Board of Education 16 App. Div. 2d 99, 226 Ny S2d 329 (1962).

46. Moliter v Kaneland Community Unity District, No. 302, 18 Ill. 2d 11, 163 N.E. 2d 80 (1959).

47. Mower v The Inhabitants of Leicester, 9 Mass. Rep. 247 (1812).

48. Muskopf v Corning Hospital District 55 Cal. 2d 211, 359 P2d 457 (1961).

49. Novack v Los Angeles School District 92 Cal. App. 2d 169, 206 P2d 403 (1949).

50. Ogando v Carquinez Grammar School District 24 Cal. App. 2d 567, 75 P2d 641 (1938).

51. Perumean v Wills 8 Cal. 2d 578, 67 P2d 96 (1937).

52. Pirkle v Oakdale Union Grammar School District 40 Cal. 2d 207, 253 P2d 1 (1953).

53. Prochl, Tort Liability of Teachers, 12 Vand. L. Rev. 723, 742 (1959).

54. Pugh, Historical Approach to the Doctrine of Sovereign Immunity, 13 La. L. Rev. 476 (1953).

55. Raymond v Paradise Unified School District 218 Cal. App. 2d, 1, 31 Cal. App. 2d, 1, 31 Cal. Rptr. 847 (1963).

56. Reagh v San Francisco Unified School District 119 Cal. App. 2d 65, 259 P2d 43 (1953).

57. Reithandt v Board of Education 43 Cal. App. 2d 629, 111 P2d 440 (1941).

58. Ridge v Boulder Creek Union High School District 60 Cal. App. 2d 453, 140 P2d 990 (1943).

59. Rodriguez v San Jose Unified School District 157 Cal. App. 2d 842, 322 P2d 70 (1958).

60. Ross v San Francisco Unified School District 120 Cal. App. 2d 185, 260 P2d 663 (1953).

61. Satariano v Sleight 54 Cal. App. 2d 278, 129 P2d 35 (1942).

62. Shannon v Central-Gaither Union School District 133 Cal. App. 124 23 P2d 769 (1933).

63. Swartley v Seattle School District 70 Wash. 2d 17, 421 P2d 1009 (1966).

64. Titus v Lindberg 49 NJ 77, 228 A 2d 65, 38 ALR 3d 818 (1967).

65. Tymkowicz v San Jose Unified School District 151 Cal. App. 2d 517, 312 P2d 388 (1957).

66. Underhill v Alameda Elementary School District 133 Cal. App. 733 24 P. 2d 849 (1933).

67. Welch v Dunsmuir Joint Union High School District 326, P2d 633 Cal. App. (1958).

68. Weldy v Oakland High School District 19 Cal. App. 2d 429, 65 P2d 851 (1937).

69. West's Annotated Labor Code & 6302.

70. Witkin, Summary of California Law Torts & 42 7th edition (1969).

71. Woodman v Hemet Union High School District 136 Cal. App. 544, 29 P 2d 257 (1934).

72. Woodsmall v Mt. Diablo Unified School District 188 Cal. App. 2d 262, 10 Cal. Rptr. 447 (1961).

73. Wright v Arcade School District 230 Cal. App. 2d 272, 40 Cal. Rptr. 812 (1964).

74. Wright v San Bernardino High School District 121 Cal. App. 2d 342, 263 P2d 25 (1953).

75. Ziegler v Santa Cruz City High School District 168 Cal. App. 2nd 277, 335 P2d 709 (1959).